

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 4 December 2007

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR *v.* THOMAS LUBANGA DYILO**

Public

Prosecution's request for extension of the page limit for the "summary of presentation of evidence"

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Ekkehard Withopf, Senior Trial Lawyer

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval
Mr Marc Desalliers
Ms Caroline Buteau

Legal Representatives for the Victims

a/0001/06 to a/0003/06 and a/0106/06

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu

Background:

1. On 9 November 2007, in its “Decision Regarding the Timing and Manner of Disclosure and the Date of Trial”¹, the Trial Chamber ordered the Prosecution to serve by 14 December 2007 the “summary of presentation of evidence”.
2. The Trial Chamber defined the “summary of presentation of evidence” as “a document which explains its [the Prosecution’s] case by reference to the witnesses it intends to call and the other evidence it intends to rely upon. Furthermore, this document shall explain how the evidence relates to the charges.”²

Discussion:*Situation:*

3. Regulation 37(1) of the Regulations of the Court determines that “[A] document filed with the Registry shall not exceed 20 pages, unless otherwise provided in the Statute, Rules, these Regulations or ordered by the Chamber.” Regulation 38 of the Regulations of the Court provides for a number of specific page limits for certain filings as detailed therein.

¹ ICC-01/04-01/06-1019, para. 26.

² ICC-01/04-01/06-1019, para. 26.

4. Regulation 38 does not provide for a specific page limit for the “summary of presentation of evidence”.³ The Trial Chamber has not expressly set a page limit. Thus, the general 20 pages page limit of Regulation 37(1) of the Regulations of the Court applies.

Exceptional circumstances:

5. The Prosecution requests extension of the page limit to 50 pages, pursuant to Regulation 37(2). It is submitted that a comparison of documents similar to the “summary of presentation of evidence” indicates that there are “exceptional circumstances” that warrant an extension of the 20 pages page limit.

- The “Prosecutor’s Application for Warrant of Arrest, Article 58” of 12 January 2006⁴ (Application) is comprised of 47 pages. Pursuant to Article 58(2)(c), an application for warrant of arrest shall, *inter alia*, contain “a concise statement of the facts which are alleged to constitute those crimes” and “a summary of the evidence and any other information which establish reasonable grounds to believe that the person committed those crimes.”⁵ Whilst the Application includes other aspects, it is noted that 28 pages are devoted to the “summary of the evidence”.

³ A “summary of presentation of evidence” is not specifically mentioned in the law governing the ICC proceedings.

⁴ ICC-01/04-01/06-32-Conf-AnxA. The 50 pages page limit pursuant to Regulation 38(2)(e) of the Regulations of the Court applies.

⁵ Article 58(2)(c) and (d).

- The “Document Containing the Charges, Article 61(3)(a)” of 28 August 2006⁶ is comprised of 25 pages. Pursuant Article 61(3)(a) and Rule 121(3), the Document Containing the Charges is a “detailed description of the charges”.⁷ The evidentiary threshold this description needs to satisfy is “substantial grounds to believe that the person committed each of the crimes charged”.⁸
6. The “Decision on the confirmation of charges” of 29 January 2007⁹ is comprised of 158 pages. Pursuant to Article 61(7), a decision on the confirmation of charges is the determination “whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged.”¹⁰
7. In the Prosecution’s submission, the “summary of presentation of evidence” as defined by the Trial Chamber¹¹ is, in substance, more than “a summary of the evidence and other information” as required for the application for warrant of arrest; it also exceeds the “detailed description of the charges” as requested for the Document Containing the Charges. The summary of the evidence and other information must sufficiently inform the Trial Chamber and the Defence of the Prosecution’s case for trial. This comprehensive review requires more than a mere summary of the evidence, which was needed at the earlier stages of the proceedings. As the burden cast on the Prosecution at trial is to lead evidence that

⁶ ICC-01/04-01/06-356-Conf-Anx1.

⁷ Rule 121(3).

⁸ Article 61(7).

⁹ ICC-01/04-01/06-796-Conf-tEN.

¹⁰ Article 61(3)(7).

¹¹ See paragraph 2 above.

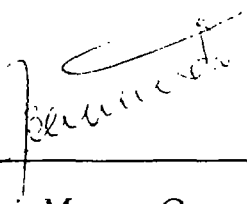
establishes the guilt of the accused beyond reasonable doubt, it is submitted that the “summary of presentation of evidence” will necessarily be longer than the previous related filings to reflect this increase in evidence.

8. In addition, the Prosecution will have to make specific reference to the witnesses it intends to call at trial¹² and the other evidence it intends to rely upon, which is anticipated to result in a document that is footnote-heavy, thus adding to the number of pages.
9. Furthermore, the Prosecution will provide for the benefit of the Trial Chamber, the Defence and the Participants, together with the “summary of presentation of evidence” a summary of its legal theory of co-perpetration.
10. At this stage of the drafting process, the Prosecution anticipates that it will need 50 pages to meet the criteria for the “summary of the presentation of evidence” as established by the Trial Chamber.

¹² The Prosecution uses this opportunity to alert the Trial Chamber, the Defence and the Participants that at this stage the names of the witnesses in the versions that will be provided to the Defence and the Participants will to a significant extent for reasons of victim and witness protection be replaced by pseudonyms.

Request:

11. Accordingly, the Prosecution requests that the Trial Chamber grant an extension of the page limit for the filing of the “summary of presentation of evidence” to 50 pages, pursuant to Regulation 37(2) of the Regulations of the Court.



Luis Moreno-Ocampo
Prosecutor

Dated this 4th day of December 2007

At The Hague, The Netherlands